DRAFT

ENVIRONMENTAL ASSESSMENT

Home Run Pond Drawdown and Fish Removal

FWP-SEA-FISH-R6-2023-601

10/04/2023

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Environmental Assessment

The Montana Department of Fish, Wildlife and Parks (FWP) has prepared this Draft Environmental Assessment (EA) in accordance with the requirements of the Montana Environmental Policy Act (MEPA). The purpose of an EA is to identify, analyze, and disclose the impacts of a proposed state action. This document may disclose impacts that have no required mitigation measures, or over which FWP, more broadly, has no regulatory authority.

Local governments and other state agencies may have authority over different resources and activities under separate regulations. FWP actions will only be approved if the proposed action complies with applicable regulations. FWP has a separate obligation to comply with any federal, state, or local laws and to obtain any other permits, licenses, or approvals required for any part of the proposed action.

This EA was prepared for the following action:

PROJECT NAME: Home Run Pond drawdown and fish removal	
LOCATION: Sullivan Park, Glasgow, MT	**COUNTY:** Valley
PROPERTY OWNERSHIP: ☐ **FEDERAL** ☐ **STATE** ☐ **COUNTY** ☐ **PRIVATE** **X CITY**	
EA PREPARER: Jared Krebs	**DATE ISSUED:** 10/4/2023

I. Compliance with the Montana Environmental Policy Act

Before a proposed *project* may be approved, environmental review must be conducted to identify and consider potential impacts of the proposed project on the human and physical environment affected by the project. The Montana Environmental Policy Act (MEPA) and its implementing rules and regulations require different levels of environmental review, depending on the proposed project, significance of potential impacts, and the review timeline. § 75-1-201, Montana Code Annotated ("MCA"), and the Administrative Rules of Montana ("ARM") 12.2.430, General Requirements of the Environmental Review Process.

FWP must prepare an EA when:

- It is considering a "state-proposed project," which is defined in § 75-1-220(8)(a) as:
  (i) a project, program, or activity initiated and directly undertaken by a state agency;
  (ii) … a project or activity supported through a contract, grant, subsidy, loan, or other form of funding assistance from a state agency, either singly or in combination with one or more other state agencies; or
  (iii) … a project or activity authorized by a state agency acting in a land management capacity for a lease, easement, license, or other authorization to act.
- It is not clear without preparation of an EA whether the proposed project is a major one significantly affecting the quality of the human environment. ARM 12.2.430(3)(a));
- FWP has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ARM 12.2.430(2) (a) and (d) through a similar planning and decision-making process (ARM 12.2.430(3)(b));
- Statutory requirements do not allow sufficient time for the FWP to prepare an EIS (ARM 12.2.430(3)(c));
- The project is not specifically excluded from MEPA review according to § 75-1-220(8)(b) or ARM 12.2.430(5); or
- As an alternative to preparing an EIS, prepare an EA whenever the project is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all the impacts of the proposed project have been accurately identified, that they will be mitigated below

the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance (ARM 12.2.430(4)).

MEPA is procedural; its intent is to ensure that impacts to the environment associated with a proposed project are fully considered and the public is informed of potential impacts resulting from the project.

II. Background and Description of Proposed Project

This section includes a short description of the proposed project including the responsible party, the type of proposed action and the anticipated schedule of the proposed project.

Name of Project: Home Run Pond drawdown and fish removal

Home Run Pond (0.8 acres, 14' max depth) was constructed primarily as a kid's fishing pond within Sullivan Park in Glasgow, MT. Fisheries resources are managed by Montana Fish, Wildlife & Parks (FWP) while the City of Glasgow owns the pond and surrounding property. Home Run Pond is managed as a "put-grow-take" rainbow trout fishery with a management goal of achieving high angler catch rates. High-water events in 2011 and 2023 allowed for connectivity between the Milk River and Home Run Pond, resulting in numerous undesirable species (common carp, black bullhead) to become established. Additionally, yellow perch have become established in Home Run Pond, likely a result of an illegal introduction. Recent winterkill events (primarily rainbow trout) have occurred because of reduced depth and degraded water quality combined with competition from undesirable species. Despite rainbow trout survival being poor, these undesirable species (common carp, black bullhead) have been able to persist. These species compete for resources with rainbow trout and further reduce the productivity of the fishery.

The proposed project would drawdown Home Run Pond by pumping water out of the pond into adjacent drainage ditches. Water leaving the pond would then flow through irrigation ditches back into the Milk River. The water level in Home Run Pond would be reduced to a minimum pool level that would not allow the remaining fish species to survive overwinter. Additionally, staff would attempt to remove refuse or debris that has been dumped in the pond since construction. This proposed drawdown would begin in November 2023. Pumping rates may vary but the goal is to reduce water levels to minimum pool before ice-on. Home Run Pond will remain at minimum pool (near-empty) until spring 2024. In spring 2024, Home Run Pond will be refilled with the existing well (or alternate water sources) to full pool and stocked with hatchery-reared rainbow trout in the May-June period.

FWP is proposing this project with the support of Glasgow Chamber of Commerce, Hi-Line Sportsmen and stakeholders within the Glasgow community.

Affected Area / Location of Proposed Project

- Legal Description
    - Latitude/Longitude: 48.18395, -106.62023
    - Section, Township, and Range: S13 T28N R39E
    - Town/City, County, Montana: Glasgow, Valley, Montana
- Location Map

Figure 1 – Home Run Pond location (red), just southeast of Glasgow, MT.

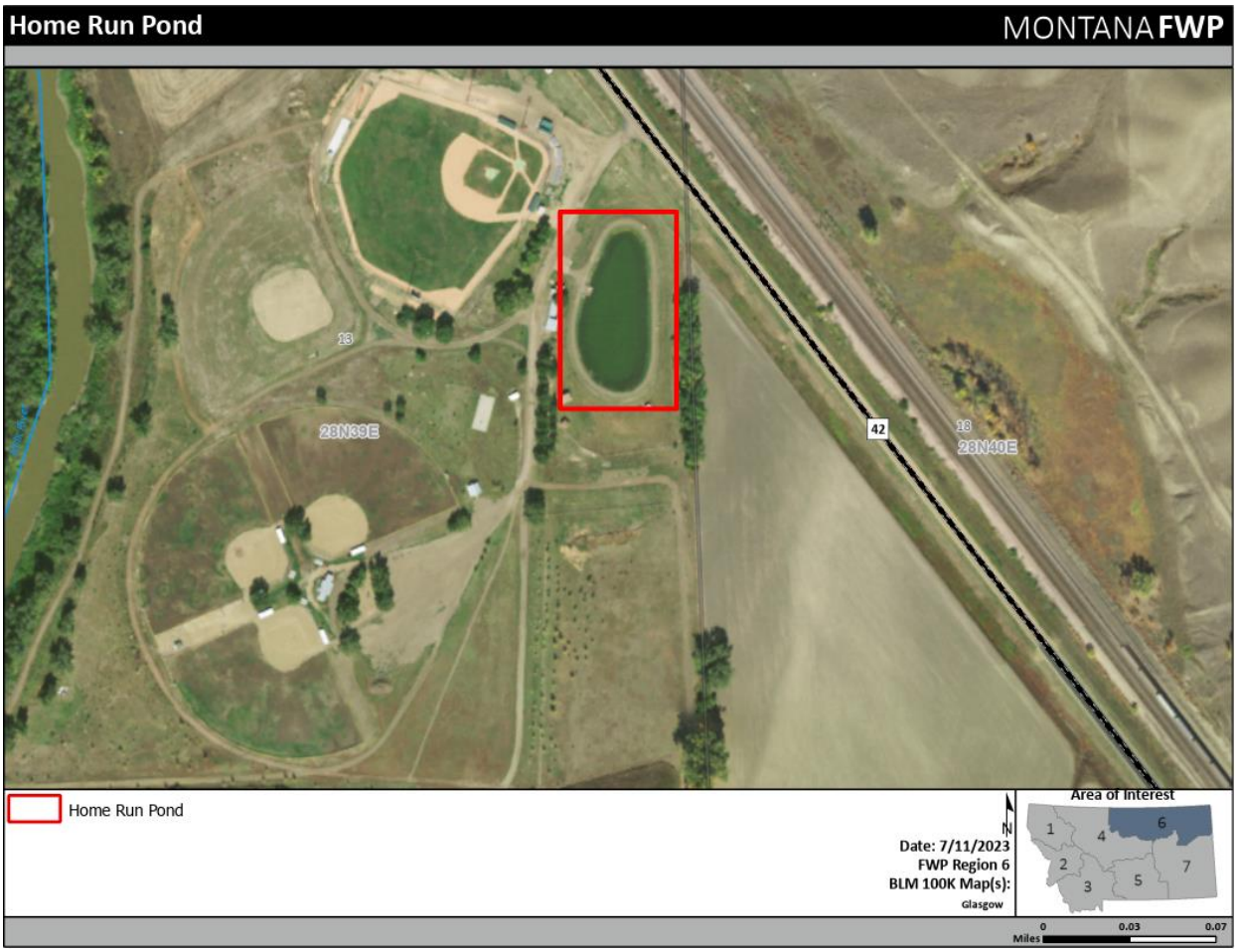

Figure 2 – Home Run Pond (red) and immediate surrounding features.

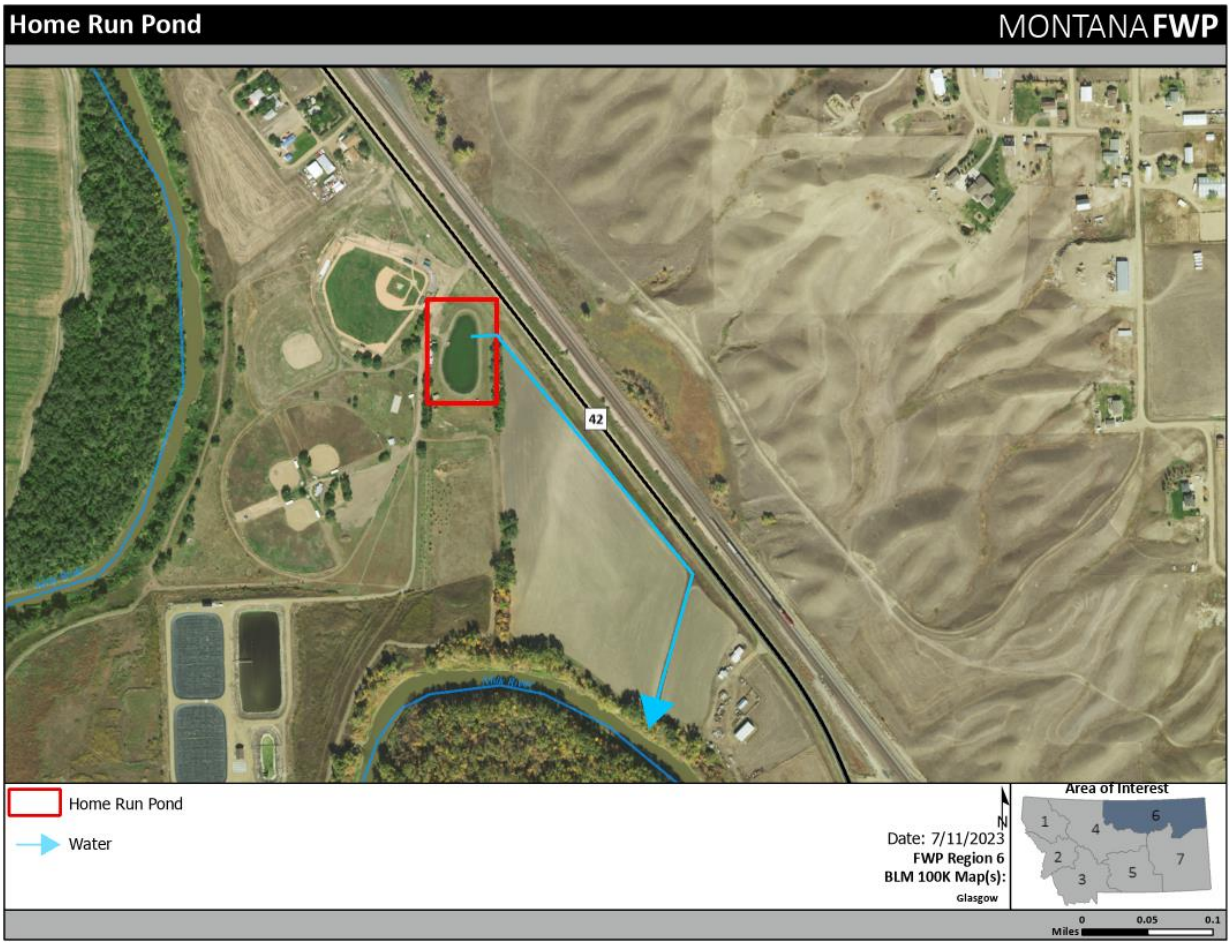

Figure 3 – Home Run Pond (red) and anticipated route of pumped water (blue).

III. Purpose and Benefits of Proposed Project

The EA must include a description of the purpose and need or benefits of the proposed project. ARM 12.2.432(3)(b). Benefits of the proposed project refer to benefits to the resource, public, department, state, and/or other.

The purpose of the proposed project is to drawdown Home Run Pond in November 2023 to minimum pool levels to ensure the existing fish assemblage (undesirable species and illegally introduced species) will not overwinter. FWP will restock the pond with rainbow trout in the pond in spring 2024 following refill using the existing well (or alternate water sources).

Removal of undesirable and illegally introduced species should improve survival and growth of hatchery stocked rainbow trout. Additionally, improved water quality, removal of undesirable species and the slight increase in water depth (removal of trash and sediment) will enhance fish survival overwinter. With improved rainbow trout survival, angler catch rates should improve.

FWP will monitor the pond during the fall/winter of 2023-2024 to ensure that water depths are sufficiently shallow to induced winterkill of remaining fish. Prior to restocking in 2024, netting will occur to verify that all fish were killed. Post-treatment changes to the fishery (improved rainbow trout survival and growth) will be monitored by FWP fisheries biologists during annual long-term sampling efforts.

If FWP prepared a cost/benefit analysis before completion of the EA, the EA must contain the cost/benefit analysis or a reference to it. ARM 12.2.432(3)(b).

	Yes*	No
Was a cost/benefit analysis prepared for the proposed project?	☐	☒

* If yes, a copy of the cost/benefit analysis prepared for the proposed project is included in Attachment A to this Draft EA

IV. Other Agency Regulatory Responsibilities

FWP must list any federal, state, and/or local agencies that have overlapping or additional jurisdiction, or environmental review responsibility for the proposed project, as well as permits, licenses, and other required authorizations. ARM 12.2.432(3)(c).

A list of other required local, state, and federal approvals, such as permits, certificates, and/or licenses from affected agencies is included in **Table 2** below. **Table 2** provides a summary of state requirements but does not necessarily represent a complete and comprehensive list of all permits, certificates, or approvals needed. Rather, **Table 2** lists the primary state agencies with regulatory responsibilities, the applicable regulation(s) and the purpose of the regulation(s). Agency decision-making is governed by state and federal laws, including statutes, rules, and regulations, that form the legal basis for the conditions the proposed project must meet to obtain necessary permits, certificates, licenses, or other approvals. Further, these laws set forth the conditions under which each agency could deny the necessary approvals.

Table 2: Federal, State, and/or Local Regulatory Responsibilities

Agency	Type of Authorization (permit, license, stipulation, other)	Purpose
City of Glasgow	**None**	**None**

V. List of Mitigations, Stipulations

Mitigations, stipulations, and other *enforceable* controls required by FWP, or another agency, may be relied upon to limit potential impacts associated with a proposed Project. **Table 3** below lists and evaluates enforceable conditions FWP may rely on to limit potential impacts associated with the proposed Project. ARM 12.2.432(3)(g).

Table 3: Listing and Evaluation of Enforceable Mitigations Limiting Impacts

Are enforceable controls limiting potential impacts of the proposed action? If not, no further evaluation is needed.			**Yes ☐**	**No ☒**
If yes, are these controls being relied upon to limit impacts below the level of significance? If yes, list the enforceable control(s) below			**Yes ☐**	**No ☒**
Enforceable Control	**Responsible Agency**	**Authority (Rule, Permit, Stipulation, Other)**	**Effect of Enforceable Control on Proposed Project**	

VI. Alternatives Considered

In addition to the proposed Project, and as required by MEPA, FWP analyzes the "No-Action" alternative in this EA. Under the “No Action” alternative, the proposed project would not occur. Therefore, no additional impacts to the physical environment or human population in the analysis area would occur. The “No Action” alternative forms the baseline from which the potential impacts of the proposed Project can be measured.

If the No Action alternative is selected water quality, aesthetics, and survival of rainbow trout will continue to be negatively impacted by undesirable species. The benefits of the proposed action would not be realized.

	Yes*	No
Were any additional alternatives considered and dismissed?	☒	☐

* If yes, a list and description of the other alternatives considered, but not carried forward for detailed review, is included below

This pond could be treated with rotenone and the undesirable and illegally introduced fish removed using an approved piscicide. This approach has been shown to be effective at removing fish species but also comes with a high level of public concern over the use of chemicals in public waters. This alternative was considered but the drawdown and fish-kill approach was favored.

VII. Terms Used to Describe Potential Impacts on the Physical Environment and Human Population

The impacts analysis identifies and evaluates **direct**, **secondary**, and **cumulative impacts**.

- **Direct impacts** are those that occur at the same time and place as the action that triggers the effect.
- **Secondary impacts** “are further impacts to the human environment that may be stimulated or induced by or otherwise result from a direct impact of the action.” ARM 12.2.429(18).
- **Cumulative impacts** “means the collective impacts on the human environment of the proposed action when considered in conjunction with other past and present actions related to the proposed action by location or generic type. Related future actions must also be considered when these actions are under concurrent consideration by any state agency through pre-impact statement studies, separate impact statement evaluation, or permit processing procedures.” ARM 12.2.429(7).

Where impacts are expected to occur, the impact analysis estimates the **extent, duration, frequency,** and **severity** of the impact. The duration of an impact is quantified as follows:

- **Short-Term**: impacts that would not last longer than the proposed project.
- **Long-Term**: impacts that would remain or occur following the proposed project.

The severity of an impact is measured using the following:

- **No Impact**: there would be no change from current conditions.

- **Negligible**: an adverse or beneficial effect would occur but would be at the lowest levels of detection.
- **Minor**: the effect would be noticeable but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate**: the effect would be easily identifiable and would change the function or integrity of the resource.
- **Major**: the effect would irretrievably alter the resource.

Some impacts may require mitigation. As defined in ARM 12.2.429, mitigation means:

- Avoiding an impact by not taking a certain action or parts of a project;
- Minimizing impacts by limiting the degree or magnitude of a project and its implementation;
- Rectifying an impact by repairing, rehabilitating, or restoring the affected environment; or
- Reducing or eliminating an impact over time by preservation and maintenance operations during the life of a project or the time period thereafter that an impact continues.

FWP may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations, or both, imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance. ARM 12.2.430(4).

A list of any mitigation strategies including, but not limited to, design, enforceable controls or stipulations, or both, as applicable to the proposed project is included in **Section VI** above.

FWP must analyze impacts to the physical and human environment for each alternative considered. The proposed project considered the following alternatives:

- Alternative 1: No Action
- Alternative 2: Proposed Project

Table 4: Impacts to the Physical Environment – Alternative 2: Proposed Project

PHYSICAL ENVIRONMENT	Duration of Impact			Severity of Impact					
Resource	None	Short-Term	Long-Term	None	Negligible	Minor	Moderate	Major	Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures
Terrestrial, avian, and aquatic life and habitats	☐	☒	☐	☐	☐	☒	☐	☐	No significant adverse impacts to terrestrial, avian, or aquatic life are expected. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Therefore, impacts of the proposed project to terrestrial, avian, and aquatic life are expected to be short-term minor.
Water quality, quantity, and distribution	☐	☒	☐	☒	☐	☐	☐	☐	No significant adverse impacts to water quality, quantity and distribution would be expected because of the proposed project. This project will remove undesirable species in Home Run Pond resulting in an improved fishery upon refill. The proposed project would have short-term impact any water quality, quantity or distribution in the affected area.
Geology	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to geology or geological processes in and around the proposed project location would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. The proposed project would not impact any existing geology in the affected area.
Soil quality, stability, and moisture	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to soil quality, stability, and moisture would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. The proposed project would not affect soils; therefore, no impacts would be expected because of the proposed project.
Vegetation cover, quantity, and quality	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to vegetation cover, quantity, and quality are expected because of this project.

									This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Therefore, no impacts to vegetation cover, quantity, and quality are expected because of the proposed project.
Aesthetics	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to aesthetics would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. During the drawdown period the aesthetics of the pond will be impacted from the proposed project but would be short-term and negligible.
Air quality	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to air quality are expected because of the proposed project. Air quality in the area affected by the proposed project is currently unclassifiable or in compliance with applicable national ambient air quality standards (NAAQS). Further, no significant point-sources of air pollution exist in the area affected by the proposed project. Existing sources of air pollution in the area are limited and generally include vehicle exhaust emissions. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Travel to and from Home Run Pond would take place on paved roads. When completed, the proposed project would not result in additional new air quality disturbance in the affected area. Any impacts would be short-term, consistent with existing impacts, and negligible.
Unique, endangered, fragile, or limited environmental resources	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to unique, endangered, fragile, or limited environmental resources would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. No unique, endangered, fragile, or limited environmental resources have been observed within or near the proposed project location. Therefore, no impacts would be expected because of the proposed project.

Historical and archaeological sites	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to historic and archaeological sites would be expected because of the proposed project.
Demands on environmental resources of land, water, air, and energy	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to demands on the environmental resources of land, water, air, and energy would be expected because of the proposed project. Fuel would be required to implement the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. There will be short-term demands on water to refill the pond in the spring and these impacts would be short-term and negligible.

Table 5: Impacts to the Human Population

HUMAN POPULATION	**Duration of Impact**			**Severity of Impact**					
Resource	**None**	**Short-Term**	**Long-Term**	**None**	**Negligible**	**Minor**	**Moderate**	**Major**	**Summary of Potential Direct, Secondary, and Cumulative Impacts and Mitigation Measures**
Social structures and mores	☐	☐	☒	☐	☐	☐	☒	☐	No significant adverse impacts to social structures and mores would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources Therefore, the proposed project should improve fishing opportunities and experiences in the affected area. Any impacts to pre-project social structures, customs, values, and conventions in the affected area would be potentially long-term, moderate, and beneficial.
Cultural uniqueness and diversity	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to cultural uniqueness and diversity would be expected because of the proposed project. This project will dewater Home Run Pond for

									approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. The proposed action is not expected to result in any relocation of people into or out of the affected area. Therefore, no impacts to the existing cultural uniqueness and diversity of the affected area would be expected because of the proposed project.
Access to and quality of recreational and wilderness activities	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to access and quality of recreational and wilderness activities are expected. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. No wilderness areas currently exist in the affected area; therefore, no impact to Wilderness recreation activities would occur because of the proposed project.
Local and state tax base and tax revenues	☐	☐	☒	☐	☐	☒	☐	☐	No significant adverse impacts to the local and state tax base and tax revenues would be expected from the proposed project. The proposed project may increase state and local tax revenues from fishing license sales and increased angling use of Home Run Pond. Increased traffic and use of the area may occur as knowledge and popularity of the fishery spreads, which may result in increased business for the Glasgow community. Therefore, any impacts would be long-term beneficial and minor.
Agricultural or Industrial production	☒	☐	☐	☒	☐	☐	☐	☐	No significant impacts to agricultural or industrial production would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Because the affected area is not currently used for any type of industrial production, the proposed project would not impact such practices. Therefore, no impacts would be expected because of the proposed project.
Human health and safety	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to health and human safety are expected because of or during this project. This project will dewater Home Run Pond for approximately 4 months

									(Dec-Mar) after which it will be refilled using the existing well or other sources. No changes to the environment impacting human health or safety would occur because of the proposed project. Therefore, no impacts to human health or safety would be expected.
Quantity and distribution of employment	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to the existing quantity and distribution of employment would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Short-term and negligible impacts to the local quantity and distribution of employment may be realized because existing government staff would be required to complete project activities. Any impacts would be short-term and negligible, lasting only as long as the proposed project.
Distribution and density of population and housing	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to distribution and density of population and housing would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Existing government staff would be used to accomplish the proposed project. Therefore, no impacts would be expected because of the proposed project.
Demands for government services	☐	☒	☐	☐	☒	☐	☐	☐	No significant adverse impacts to demands for government services would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Existing government staff would be used to accomplish the proposed project and affected FWP staff would continue managing the fishery as part of normal job responsibilities. Minor additional demands for government services would be expected to implement the proposed project. Any impacts would be short-term and negligible.

Industrial, agricultural, and commercial activity	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to agricultural, commercial, or industrial activity would be expected because of the proposed project. This project will dewater Home Run Pond for approximately 4 months (Dec-Mar) after which it will be refilled using the existing well or other sources. Because the affected area is not currently used for any type of industrial or commercial activities, the proposed project would not impact such practices. Therefore, no impacts would be expected because of the proposed project.
Locally adopted environmental plans and goals	☐	☐	☒	☐	☐	☐	☒	☐	No significant adverse impacts to locally adopted environmental plans and goals would be expected because of the proposed project. The principal fisheries management goal for Home Run Pond is to provide high angler catch rates for anglers. The proposed project is designed to accomplish this goal. FWP is unaware of any other locally adopted environmental plans or goals that may be impacted by the proposed project. Therefore, any impacts would be long-term, moderate, and beneficial.
Other appropriate social and economic circumstances	☒	☐	☐	☒	☐	☐	☐	☐	No significant adverse impacts to any other appropriate social and economic circumstances would be expected because of the proposed project. FWP is unaware of any other appropriate social and economic circumstances that may be impacted by the proposed project. Therefore, no impacts would be expected because of the proposed project.

Table 6: Determining the Significance of Impacts on the Quality of the Human Environment

If the EA identifies impacts associated with the proposed project FWP must determine the significance of the impacts. ARM 12.2.431. This determination forms the basis for FWP's decision as to whether it is necessary to prepare an environmental impact statement.

According to the applicable requirements of ARM 12.2.431, FWP must consider the criteria identified in this table to determine the significance of each impact on the quality of the human environment. The significance determination is made by giving weight to these criteria in their totality. For example, impacts identified as moderate or major in severity may not be significant if the duration is short-term. However, moderate or major impacts of short-term duration may be significant if the quantity and quality of the resource is limited and/or the resource is unique or fragile. Further, moderate or major impacts to a resource may not be significant if the quantity of that resource is high or the quality of the resource is not unique or fragile.

Criteria Used to Determine Significance	
1	The **severity, duration, geographic extent,** and **frequency** of the occurrence of the impact **"Severity"** describes the density of the potential impact, while **"extent"** describes the area where the impact will likely occur, e.g., a project may propagate ten noxious weeds on a surface area of 1 square foot. Here, the impact may be high in severity, but over a low extent. In contrast, if ten noxious weeds were distributed over ten acres, there may be low severity over a larger extent. **"Duration"** describes the time period during which an impact may occur, while **"frequency"** describes how often the impact may occur, e.g., an operation that uses lights to mine at night may have frequent lighting impacts during one season (duration).
2	The probability that the impact will occur if the proposed project occurs; or conversely, reasonable assurance in keeping with the potential severity of an impact that the impact will not occur
3	Growth-inducing or growth-inhibiting aspects of the impact, including the relationship or contribution of the impact to cumulative impacts
4	The quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources and values
5	The importance to the state and to society of each environmental resource or value that would be affected
6	Any precedent that would be set as a result of an impact of the proposed project that would commit FWP to future actions with significant impacts or a decision in principle about such future actions
7	Potential conflict with local, state, or federal laws, requirements, or formal plans

VIII. Private Property Impact Analysis (Takings)

The 54th Montana Legislature enacted the Private Property Assessment Act, now found at § 2-10-101. The intent was to establish an orderly and consistent process by which state agencies evaluate their proposed projects under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency projects pertaining to land or water management or to some other environmental matter that, if adopted and enforced without due process of law and just compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agencies to assess the impact of a proposed agency project on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency project has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act.

Table 7: Private Property Assessment (Takings)

	Yes	No
Is FWP regulating the use of private property under a regulatory statute adopted pursuant to the police power of the state? (Property management, grants of financial assistance, and the exercise of the power of eminent domain are not within this category.) If not, no further analysis is required	☐	☒
Does the proposed regulatory action restrict the use of the regulated person's private property? If not, no further analysis is required.	☐	☐
Does FWP have legal discretion to impose or not impose the proposed restriction or discretion as to how the restriction will be imposed? If not, no further analysis is required	☐	☐
If so, FWP must determine if there are alternatives that would reduce, minimize, or eliminate the restriction on the use of private property, and analyze such alternatives. Have alternatives been considered and/or analyzed? If so, describe below:	☐	☐

PRIVATE PROPERTY ASSESMENT ACT (PPAA)			
Does the Proposed Action Have Takings Implications under the PPAA?	**Question #**	**Yes**	**No**
Does the project pertain to land or water management or environmental regulations affecting private property or water rights?	1	☐	☒
Does the action result in either a permanent or an indefinite physical occupation of private property?	2	☐	☒
Does the action deprive the owner of all economically viable uses of the property?	3	☐	☒
Does the action require a property owner to dedicate a portion of property or to grant an easement? (If answer is NO, skip questions 5a and 5b and continue with question 6.)	4	☐	☒
Is there a reasonable, specific connection between the government requirement and legitimate state interest?	4a	☐	☐
Is the government requirement roughly proportional to the impact of the proposed use of the property?	4b	☐	☐

Does the action deny a fundamental attribute of ownership?	5	☐	☒
Does the action have a severe impact of the value of the property?	6	☐	☒
Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public general? (If the answer is NO, skip questions 7a-7c.)	7	☐	☒
Is the impact of government action direct, peculiar, and significant?	7a	☐	☐
Has the government action resulted in the property becoming practically inaccessible, waterlogged, or flooded?	7b	☐	☐
Has the government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question?	7c	☐	☐
Does the proposed action result in taking or damaging implications?		☐	☒
Taking or damaging implications exist if **YES** is checked in response to Question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to question 5a or 5b.			
If taking or damaging implications exist, the agency must comply with MCA § 2-10-105 of the PPAA, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.			
Alternatives: The analysis under the Private Property Assessment Act, §§ 2-10-101 through -112, MCA, indicates no impact. FWP does not plan to impose conditions that would restrict the regulated person's use of private property to constitute a taking.			

IX. Public Participation

The level of analysis in an EA will vary with the complexity and seriousness of environmental issues associated with a proposed action. The level of public interest will also vary. FWP is responsible for adjusting public review to match these factors (ARM 12.2.433(1)). Because FWP determines the proposed action will result in limited environmental impact, and little public interest has been expressed, FWP determines the following public notice strategy will provide an appropriate level of public review:

- An EA is a public document and may be inspected upon request. Any person may obtain a copy of an EA by making a request to FWP. If the document is out-of-print, a copying charge may be levied (ARM 12.2.433(2)).
- Public notice will be served on the Montana Fish, Wildlife and Parks website at: https://fwp.mt.gov/public-notices
- Copies will be distributed to neighboring landowners to ensure their knowledge of the proposed project and opportunity for review and comment on the proposed action.
- FWP maintains a mailing list of persons interested in a particular action or type of action. FWP will notify all interested persons and distribute copies of the EA to those persons for review and comment (ARM 12.2.433(3)).
- FWP will issue public notice in the following newspaper periodical(s) on the date(s) indicated.

Newspaper / Periodical	Date(s) Public Notice Issued
Glasgow Courier	10/4/2023

- Public notice will announce the availability of the EA, summarize its content, and solicit public comment.
    - **Duration of Public Comment Period:** The public comment period begins on the date of publication of legal notice in area newspapers (see above). Written or e-mailed comments will be accepted until 5:00 p.m., MST, on the last day of public comment, as listed below:

Length of Public Comment Period: 30 days
Public Comment Period Begins: 10/04/2023
Public Comment Period Ends: 11/02/2023

Comments must be addressed to the FWP contact, as listed below.

- **Where to Mail or Email Comments on the Draft EA:**
  Name: JARED KREBS
  Email: jared.krebs@mt.gov

  Mailing Address:
  1 Airport Rd
  Glasgow, MT 59230

X. Recommendation for Further Environmental Analysis

NO further analysis is needed for the proposed action	☒
FWP must conduct **EIS** level review for the proposed action	☐

XI. EA Preparation and Review

	Name	**Title**
EA prepared by:	Jared Krebs	Fisheries Biologist
EA reviewed by:	Steve Dalbey	Fisheries Manager